



366661



"Winters, Karen"
<KWinters@ssd.com>
06/14/2006 03:10 PM

To Jonathan Pierce <piercejc@michigan.gov>,
Alan.Tenenbaum@usdoj.gov,
Betsey.Streuli@deq.state.ok.us, "Brooks, Patrick J."
cc Maria Cintron-Silva/DC/USEPA/US@EPA, "Gibbons, M.
Colette" <CGIBBONS@szd.com>, "Lerner, Stephen D."
<SLerner@ssd.com>, LPutman@milbank.com, "Monroe,
bcc

Subject RE: CTA and Settlement Agreement Issues - From Steve
Samuels

Thanks very much Jonathan.

From: Jonathan Pierce [mailto:piercejc@michigan.gov]
Sent: Wednesday, June 14, 2006 4:03 PM
To: Alan.Tenenbaum@usdoj.gov; Betsey.Streuli@deq.state.ok.us; Brooks, Patrick J.;
ebessey@kdhe.state.ks.us; Elise.Feldman@usdoj.gov; garypie.catherine@epamail.epa.gov;
JMorgan@atg.state.il.us; Powers, Victoria; Samuels, Stephen; Winters, Karen
Cc: Cintron-Silva.Maria@epamail.epa.gov; Gibbons, M. Colette; Lerner, Stephen D.;
LPutman@milbank.com; Monroe, Brian; Reichel, Robert; TKreller@milbank.com;
wvawest@ameritech.net
Subject: RE: CTA and Settlement Agreement Issues - From Steve Samuels

will cc Karen

Jonathan Pierce

>>> "Winters, Karen" <KWinters@ssd.com> 6/14/2006 3:50:41 PM >>>
Could you please forward those as soon as you possibly can? Thanks.

From: Jonathan Pierce [mailto:piercejc@michigan.gov]
Sent: Wednesday, June 14, 2006 3:41 PM
To: Alan.Tenenbaum@usdoj.gov; Betsey.Streuli@deq.state.ok.us; Brooks, Patrick J.;
ebessey@kdhe.state.ks.us; Elise.Feldman@usdoj.gov; garypie.catherine@epamail.epa.gov;
JMorgan@atg.state.il.us; Monroe, Brian; Powers, Victoria; Samuels, Stephen; Winters, Karen
Cc: Erian Monroe; Cintron-Silva.Maria@epamail.epa.gov; Gibbons, M. Colette; Lerner,
Stephen D.; LPutman@milbank.com; Robert Reichel; TKreller@milbank.com;
wvawest@ameritech.net
Subject: RE: CTA and Settlement Agreement Issues - From Steve Samuels

I believe Michigan may still have some concerns with the latest rewrite.

Jonathan Pierce

>>> "Winters, Karen" <KWinters@ssd.com> 6/14/2006 3:24:14 PM >>>

We do not have a problem with the suggested revisions to either the Custodial Trust Agreement or the Oklahoma Settlement Agreement proposed and outlined below. I will revise the Custodial Trust Agreement and circulate that revised Agreement, highlighting the changes to what I believe will be the final draft of the document. It does not seem to me that a further conference call is necessary with respect to this document.

I will also revise the Oklahoma Settlement Agreement to incorporate the suggested revisions below. I have not received any further comments on the document and thus will not circulate a dial in number for a call unless others feel it would be productive to discuss the Agreement. Nonetheless, please feel free to send along your comments on the draft of the Agreement circulated yesterday if you had planned to comment, but have not already done so.

From: Victoria Powers [mailto:vpowers@szd.com]

Sent: Wednesday, June 14, 2006 2:09 PM

To: Stephen Samuels; Alan.Tenenbaum@usdoj.gov; Elise.Feldman@usdoj.gov; garypie.catherine@epamail.epa.gov; PierceJC@michigan.gov; monroeb@michigan.gov; Betsey.Streuli@deq.state.ok.us; ebessey@kdhe.state.ks.us; JMorgan@atg.state.il.us; Winters, Karen; Brooks, Patrick J.

Cc: Cintron-Silva.Maria@epamail.epa.gov; TKreller@milbank.com; LPutman@milbank.com; Lerner, Stephen D.; M. Colette Gibbons; wvawest@ameritech.net; Victoria Powers

Subject: CTA and Settlement Agreement Issues - From Steve Samuels

Victoria and I received a telephone call this morning from Alan and Elise during which we discussed certain concerns that they have with the CTA and the Oklahoma Settlement Agreement. As a result of that call, we have cobbled together new language for consideration by the other parties. New language is italicized and underlined; deleted language is also bracketed.

--In Sec. 2.1(e) of the CTA (circa p.10-11): "....Plan, the Confirmation Order, and any related documents [including, without limitation, any leases] in such amounts and on such terms as the Custodial Trustee may, in his discretion, determine for (i) personal injury, property damage and wrongful death and....." As we understand USEPA/DOJ's position, although they strongly desire to delete the explicit reference to leases in the CTA, they acknowledge that "related documents" incorporates the leases by reference. With that understanding, which we need all the other parties to acknowledge (via email), we can accept the requested change.

--In Sec. 5.3(a) of the CTA (circa p. 36): "...any dispute between the Custodial Trustee and an Environmental Agency regarding the modification, disapproval, or other action of the Environmental Agency regarding any submittal or request for approval by the Custodial Trustee related to the scope or means of implementing the Environmental Actions shall be resolved in accordance with the existing state or federal—depending on which is the Lead Agency—

administrative or judicial [appellate review] procedures for challenging such actions , if available.

--In the defn of "Environmental Action" in the Settlement Agreement, USEPA proposes (and the CT concurs) that we import the existing definition from the CTA (i.e., before the CT's suggested change to the term this morning), to wit:

"Environmental Actions" shall mean investigation, remediation, response, closure and post-closure actions to the extent required by applicable law, including bankruptcy law and Environmental Law and those actions agreed to be performed under the Settlement Agreements; and, if and to the extent that funds are available in a Custodial Trust Account, such other response actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Properties.

--The Trustee proposes the addition of a new paragraph 4(b) to the Oklahoma Settlement Agreement that would make clear that (1) his obligation to do work is limited by the funds available and, (2) that funds must be assured for the performance of required Environmental Actions before they may be expended for items that would facilitate sale/lease of the property. Specifically:

(b) Site Specific Environmental Actions and other actions. The Custodial Trustee shall perform the Environmental Actions and other actions prescribed by this paragraph to the extent (a) funds are available in the applicable Custodial Trust Account and, (b) Environmental Actions are required by applicable law, including bankruptcy law and Environmental Law, including those Actions set forth in Exhibit B hereto and such other Actions as may be agreed upon by the Custodial Trustee and the ODEQ from time to time hereafter and, (c) funds are or will be available in the applicable Custodial Trust Account following the performance of the Environmental Actions prescribed by "(b)" above, such other actions as the Custodial Trustee, after consultation with the Lead Agency, determines would facilitate the sale, transfer or other disposition of the Oklahoma Property.

Alan also suggested the use of language from the model RD/RA consent decree to address the "conflict" between the governmental parties interest in being able to promptly address environmental problems if the Trustee doesn't act expeditiously and adequately and the Trustee's concern that the CTA doesn't give the government carte blanche to take implement any remedy they may want at any time. Because I am short of time, I asked Karen Winters to take the first stab at that.



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